



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO The Board of Environmental Protection
FROM Valerie Whittier, Bureau of Land & Water Quality, Augusta
RE Consent Agreement for Wardwell Construction & Trucking Corp and Robinson Trust, Orland, Maine
DATE December 21, 2006

Statute and Rule Reference: The Natural Resources Protection Act, 38 M R S A Section 480-C, prohibits soil disturbance in and adjacent to a great pond without first obtaining a permit from the Department

Location: Craig Pond, Orland, Maine

Description: Wardwell Construction and Trucking Corporation, as contractor for Robinson Trust, placed rip rap along approximately 150 feet of shoreline. However, the rip rap extended out into the lake beyond the toe of the bank and covered approximately 525 square feet of lake bottom. A Permit By Rule Notification Form for shoreline stabilization had been submitted to the Department, however, the work was not done in compliance with the standards.

Environmental Issues: Great ponds are among the State's most sensitive protected natural resources. Aquatic life is richest and most abundant in the shallow water about the edges of lakes. This zone in which light penetrates to the bottom of the lake is known as the littoral zone and it is the most productive area of the lake. The health of the littoral zone is very important to the food web within the lake.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Wardwell Construction and Trucking Corp and Robinson Trust reconstruct the rip rap such that the stone is no further into the lake than the toe of slope. Department staff has inspected the site and the rip rap has been reconstructed in compliance with the Permit by Rule standards. The Agreement requires that three or more field supervisors from Wardwell Construction and Trucking Corp attend Department training in erosion controls, which has been completed. Also, Wardwell Construction and Trucking Corp paid a monetary penalty of \$2,300.00.

AUGUSTA

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AUGUSTA, MAINE 04333-0017
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RAY BLDG., HOSPITAL ST

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
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PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17
AUGUSTA, MAINE 04333

BOARD ORDER

IN THE MATTER OF

WARDWELL CONSTRUCTION & TRUCKING CORP.) ADMINISTRATIVE
PO Box 198) CONSENT
Orland, Maine) AGREEMENT
)
and) AND
)
ROBINSON TRUST) ENFORCEMENT
c/o Glee R. Ross) ORDER
21 Arnold Road) (NRPA)
Freeport, Maine)

This Agreement by and among Wardwell Construction & Trucking Corp , Robinson Trust, the Maine Board of Environmental Protection (the "Board") and the State of Maine Attorney General is entered into pursuant to 38 M.R.S.A §347-A and in accordance with the Department of Environmental Protection ("Department") Consent Agreement Policy, as amended

The parties agree as follows:

- 1 Robinson Trust, the heirs of Algie K. Robinson, own a parcel of land on Lady Slipper Trail in Orland, Maine as described and recorded in Book 3831 on Page 112 of the Hancock County Registry of Deeds
- 2 Wardwell Construction & Trucking Corp is a Maine corporation authorized to conduct business in Maine and which operates a construction company Robert Wardwell is the President of Wardwell Construction & Trucking Corp
- 3 The property described in Paragraph 1 of this Agreement is directly adjacent to Craig Pond which is a great pond as defined by the Natural Resources Protection Act, 38 M.R.S.A § 480-B(5), and waters of the State as defined by the Protection and Improvement of Waters Act, 38 M.R.S.A § 361-A(7)
- 4 On October 10, 2003, Algie K. Robinson submitted a permit by rule notification form to the Department pursuant to Chapter 305 of Department Rules Algie K. Robinson proposed to place rip rap along the shoreline of her property By signing the permit by rule notification form, Algie K. Robinson agreed to comply with all applicable standards as set forth in Chapter 305 of Department Rules

- 5 On May 25, 2004 and April 15, 2005, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that Wardwell Construction & Trucking Corp., as agent for Algie K. Robinson, placed rip rap along 150 feet of the shoreline of Craig Pond. The toe of the rip rap was approximately 3-4 feet below the normal high water line of the great pond, effectively filling in approximately 525 square feet of Craig Pond. Chapter 305 §8(C)(7) requires rip rap to be anchored at the toe of the eroding slope, thereby not extending into the great pond and eliminating habitat.
- 6 The activities described in Paragraph 5 of this Agreement constitute the following violations:
 - A By placing fill in a great pond without first obtaining a permit from the Department, Robinson Trust and Wardwell Construction & Trucking Corp violated the Natural Resources Protection Act, 38 M R S.A. §480-C
 - B By not following Permit By Rule Standards, Robinson Trust and Wardwell Construction & Trucking Corp violated Chapter 305 of Department rules and the Natural Resources Protection Act, 38 M R S A. § 480-C
7. On February 4, 2005, the Department issued a Notice of Violation to Wardwell Construction & Trucking Corp and Algie K. Robinson regarding the violations described in Paragraphs 5 and 6 of this Agreement. On December 8, 2005, the Department issued a Notice of Violation to Robinson Trust regarding the violations described in Paragraphs 5 and 6 of this Agreement.
- 8 The Board has regulatory authority over the activities described herein.
9. This Agreement shall become effective only if accepted by the Board and approved by the Attorney General.
- 10 To resolve the violations referred to in Paragraphs 5 and 6 of this Agreement, Robinson Trust and Wardwell Construction & Trucking Corp agree to:
 - A No later than October 15, 2006, remove the rock fill from the lake and install the riprap in accordance with the permit by rule standards. All restoration must be completed to the satisfaction of Department staff.
 - B. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this consent agreement.

WARDWELL CONSTRUCTION & TRUCKING CORP et al
PO Box 198
ORLAND, MAINE

3 ADMINISTRATIVE CONSENT
) AGREEMENT AND
) ENFORCEMENT ORDER
) (NRPA)

- 11 To resolve the violations referred to in Paragraphs 5 and 6 of this Agreement, Wardwell Construction & Trucking Corp agrees to:
 - A No later than May 1, 2007, have at least three field supervisors from Wardwell Construction & Trucking Corp attend a Department Nonpoint Source Training Center workshop that provides continuing education on erosion control and features instruction on the proper construction of road crossings, with a particular emphasis on fish passage. Documentation of successful completion of the workshop must be sent to Department staff no later than June 1, 2007
 - B Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Two Thousand Three Hundred dollars (\$2,300 00) as a civil monetary penalty
12. The Board and the State of Maine Attorney General grant Robinson Trust and Wardwell Construction & Trucking Corp a release of their causes of action against Robinson Trust and Wardwell Construction & Trucking Corp for the specific violations listed in Paragraphs 5 and 6 of this Agreement on the express condition that all actions listed in Paragraphs 10 and 11 of this Agreement, as applicable, are completed in accordance with the express terms and conditions of this Agreement The release shall not become effective until this condition is satisfied

ORDER

Pursuant to 38 M.R.S.A. § 347-A and the Department Consent Agreement Policy, as amended, and based on the Agreement set forth above, the Board Orders Robinson Trust and Wardwell Construction & Trucking Corp. to

- 1 No later than October 15, 2006, remove the rock fill from the lake and install the riprap in accordance with the permit by rule standards All restoration must be completed to the satisfaction of Department staff
2. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100 00) per day per violation for the violation of any provision of this consent agreement

Pursuant to 38 M.R.S.A. § 347-A and the Department Consent Agreement Policy, as amended, and based on the Agreement set forth above, the Board Orders Wardwell Construction & Trucking Corp. to no later than May 1, 2007, have at least three field supervisors from Wardwell Construction & Trucking Corp attend a Department Nonpoint Source Training Center workshop

WARDWELL CONSTRUCTION & TRUCKING CORP. et.al.
PO Box 198
ORLAND, MAINE

4 ADMINISTRATIVE CONSENT
) AGREEMENT AND
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that provides continuing education on erosion control and features instruction on the proper construction of road crossings, with a particular emphasis on fish passage. Documentation of successful completion of the workshop must be sent to Department staff by no later than June 1, 2007.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages.

WARDWELL CONSTRUCTION & TRUCKING CORP.

BY: Robert Wardwell DATE: 10-18-06
ROBERT WARDWELL, PRESIDENT

ROBINSON TRUST

BY: Glee R. Ross DATE: 10.23.2006
GLEE R. ROSS, TRUSTEE

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
MATTHEW SCOTT, CHAIR

SEEN AND AGREED TO:
STATE OF MAINE

BY: _____ DATE: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL